

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LUCIO MENDEZ,

Plaintiff,

-against-

NOOCH, INC.; RED DOT COM, INC. d/b/a/
Tangerine Restaurant and Café; and SUAN LAY
ONG, a.k.a. Janice Ong,

Defendants.
----- X

ECF Case

Docket Number 07 CV 11174 (LLS)

AFFIDAVIT OF LUCIO MENDEZ

County of Kings)
) ss:
State of New York)

Lucio Mendez, being duly sworn, deposes and says:

1. I am a plaintiff in this action.
2. From approximately May 2001 through approximately the first or second week of July 2004, I worked in a restaurant called Tangerine, which was located at 228 West 10th St., New York, NY 10014.
3. Tangerine served noodle soups and Asian food.
4. I worked at Tangerine washing dishes, cleaning the restaurant, receiving deliveries of food and alcohol, and re-stocking the kitchen and bar.
5. A manager hired me to work at Tangerine.
6. A woman called Janice Ong was the owner of Tangerine. She usually came to the restaurant every day. She would come to pick up money, pay bills, or tell the managers what to

do. Before she would arrive, the cooks would often tell me to be sure to clean extra well, because the boss was coming. She liked me, and she often said to me, "Lucio, I like how you work." I saw her fire several employees during my time working at Tangerine.

7. When I started work, my manager told me that I would be paid \$250.00 per week. This is what I earned for my first month of work.

8. After that first month, another employee who did my same job quit. Instead of hiring someone else, my manager told me that if I could do his work too, I would be paid \$400.00 per week. I agreed, and that was the arrangement for the rest of my time at Tangerine.

9. I usually worked the same schedule every week at Tangerine. I was required to come to work every day at 2:00 p.m. On days that were not busy, usually Monday through Wednesday, I would get out of work at between 1:00 a.m. and 2:00 a.m. On busy nights, which were usually Thursday through Saturday, I would get out of work at around 3:00 a.m. or 4:00 a.m. I worked seven days per week for my first two months, but after that I got Sundays off because the restaurant wasn't as busy. In total, I usually worked between 74 and 78 hours per week at Tangerine.

10. I was never paid time and a half when I worked more than 40 hours per week at Tangerine. I received a flat salary for the entire week of work.

11. I never received extra pay when I worked more than 10 hours in a day.

12. I never received tips for my work at Tangerine.

13. Starting in around mid-May 2003, my manager stopped paying me my full weekly wage. When I asked why, he said "No busy, no busy." He always told me that they would pay me later, and that I needed to wait.

14. Sometimes, I would go a full month without receiving any wages, and then my manager would pay me as much as \$800.00 to try to make up for it. Other times, I would just receive \$200.00 per week.

15. Because I wanted to make sure I knew how much money I was owed, I started keeping my own records of the weeks I worked and the amounts I was paid. Whenever I received a payment, I wrote down the amount next to the date in a notebook. Copies of my records are attached to this affidavit as Exhibit D. They cover the time period from May 2003 when I stopped receiving my full wages to mid-July 2004 when the restaurant closed. The first page lists the weeks that I worked. The second page lists the dates I was paid wages.

16. In around April 2004, one of the cooks told me that Janice was going to open another restaurant called Nooch.

17. One day in July 2004, my co-workers and I came to work, but the locks had been changed and my keys didn't work. That was how I found out that Tangerine was closed, and I didn't work there anymore after that.

18. In around September 2004, when I had been out of work for almost two months, Janice Ong called me. She told me that she wanted me to come the next day to work in her new restaurant, Nooch, doing the same job I had done at Tangerine. She told me when and where to go, and the next day I began working for her again.

19. I spent two or three days cleaning Nooch before it opened. I spent about eight hours working in total.

20. Janice did not pay me any money at all for this work. One of the members of the kitchen staff felt sorry for me and gave me \$10.00 to pay for my transportation.

21. After Nooch opened for business a few days later, I began working there. When pay day came, the manager of Nooch, Paul, asked me, "How much are you supposed to make?" I told him that I earned \$400.00. I remember that Paul was surprised, and he said, "That's way too much!" I explained that this was my wage previously, and that it was a lot of work at Nooch and I couldn't do it for less than that.

22. Although I received the same wage at Nooch as I had earned at Tangerine, \$400.00 per week, I was required to work many more hours.

23. During my first five weeks of work, I worked seven days per week. I worked from 9:00 a.m. to midnight on Mondays, and from 9:00 a.m. to 1:00 a.m. on Tuesdays through Sundays.

24. During my second month of work, I worked the same schedule, but I got Tuesdays off.

25. For about two months after that, I worked Mondays, Wednesdays, and Thursdays from 9:00 a.m. to midnight, and Fridays, Saturdays, and Sundays from 9:00 a.m. to 1:00 a.m.

26. For the rest of my work there, I worked Mondays, Wednesdays, Thursdays, and Fridays from 9:00 a.m. to midnight, and Saturdays and Sundays from 9:00 a.m. to 1:00 a.m.

27. I was never paid time and a half when I worked more than 40 hours per week. I received a flat salary for the entire week of work.

28. I quit working at Nooch on approximately March 20, 2005. I quit because the hours were very long, because I was required to wash dishes in a cold back room, in cold water in the middle of winter, and because I was required to carry heavy stacks of dishes and food up and down long sets of stairs to and from the kitchen, which was difficult and at times painful.

29. At Tangerine and at Nooch, I never saw Janice or any of her managers write down the hours I worked or the pay I received. I punched a timeclock at Tangerine and at Nooch, but I never understood why because they didn't pay me by the hour.

30. After I left my employment at Nooch, I went to a community-based organization called Make the Road By Walking because I heard they helped people who were owed wages. A lawyer there, Deborah Axt, told me that I had a right to file a lawsuit for the wages I was owed. She referred me to a lawyer named Justin Zeller, who filed a lawsuit against Nooch on my behalf in 2006.

31. After a few months, my lawyers told me that the accountant for Nooch wanted to settle my case. The accountant wrote me two checks totaling \$5725.00. I felt that this was much less than what I should have been paid for my years of work. My lawyers at Make the Road New York told me that I could file another lawsuit for the rest of the wages I was owed. This is what I decided to do.

I HEREBY SWEAR UNDER PENALTY OF PERJURY THAT THE ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Signed:

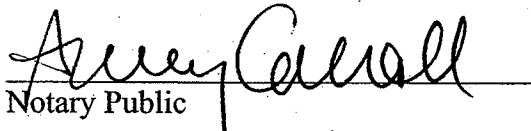

Lucio Mendez

Dated:

5/23/008

The individual known to me to be Lucio Mendez appeared before me this 23 day of May, 2008, and affixed his signature to this document above.

Signed:


Notary Public

AMY CARROLL
NOTARY PUBLIC-STATE OF NEW YORK
NO. 02CA6130989
QUALIFIED IN KINGS COUNTY
COMMISSION EXPIRES JULY 25, 20 09

TRANSLATOR'S CERTIFICATE

I, Elizabeth Wagoner, certify that I am fluent in both Spanish and English, that I have correctly and accurately prepared this affidavit for Lucio Mendez based on his testimony to me in Spanish, that I then read it back to him in Spanish, and that he assured me that he understood this affidavit and that it was correct.

Signed:


Elizabeth Wagoner

Dated:

5/23/08